IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1053

SOCIALIST LABOR PARTY, an Unincorporated Association,

Petitioner,

vs.

CITY OF GLENDALE, a Municipal Corporation,

Respondent.

Petition for Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

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To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner Socialist Labor Party respectfully prays that a writ of certiorari issue to the Court of Appeal for the State of California, Second Appellate District, to review the final order of that court reversing the judgment of the Los Angeles Superior Court entered in Petitioner's favor which declared Glendale Municipal Code Sections 26-202(c) and 26-204(i) to be unconstitutional, void and unenforceable under the First and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 2 and 7 of the Constitution of the State of California.

Opinions Below.

The opinion of the Court of Appeal, of the State of California, Second Appellate District, was originally reported at 82 Cal.App.3d 722 (1978). The Court of Appeal's final opinion is set forth in Appendix A hereto. The Supreme Court of the State of California issued an order on October 4, 1978, denying Petitioner's petition for hearing and directing that the Court of Appeal's opinion not be published in the Official Reports. The Supreme Court's Order Denying Hearing is set forth in Appendix B hereto.

Jurisdiction.

The opinion of the Court of Appeal of the State of California, Second Appellate District, was filed on July 12, 1978. A petition for rehearing was timely filed on July 24, 1978, and was denied by an order entered on August 1, 1978. A petition for hearing was timely filed in the Supreme Court of the State of California and was denied by an order entered on October 4, 1978, at which time the decision appealed from became final.

The jurisdiction of this Court is invoked under 28 United States Code Section 1257(3).

Questions Presented.

1. Whether Glendale Municipal Code Sections 26-202(c) and 26-204(i) violate petitioner's freedom of speech and freedom of press as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States?

2. Whether Glendale Municipal Code Sections 26-202(c) and 26-204(i) violate petitioner's right to equal

protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

Constitutional Provisions and Statutes Involved.

1. Section 1 of the Fourteenth Amendment to the Constitution of the United States:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. The First Amendment to the Constitution of the United States:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

3. Glendale Municipal Code Sections 26-202(c) and 26-204(i), set forth in Appendix C hereto.

Statement.

This action arises out of the City of Glendale's blunderbuss attempt to regulate its public sidewalks by restricting the exercise of the First Amendment rights involved in the distribution of publications by means of newsracks. By limiting the number of news-

racks permitted at any given location and by giving preference to conventional, commercial publications in the allocation of the limited spaces made available for newsracks, Glendale's ordinance threatens to stifle Petitioner's ability to exercise its rights of free speech and press on the public sidewalks of Glendale, while preserving those rights for certain favored publications. Although municipalities clearly have the power to impose narrowly tailored "time, place, and manner" restrictions on the right to distribute publications by means of newsracks, Glendale's overtly discriminatory mechanism for parceling out First Amendment rights in its public forum is manifestly inequitable and cannot be justified by any compelling state interest.

In July, 1975, Glendale amended its existing newsrack ordinance in a purported attempt to halt the proliferation of newsracks on its public sidewalks. Ordinance No. 4210, Appendix C.[1] Under the new Section 26-204(i) of the Glendale Municipal Code, no more than eight newsracks are permitted at any one location. These eight places are to be given out by the Director of Public Works—apparently irreversibly—according to a formula which systematically gives preference to large, conventional publications:

> "i. No more than eight newsracks shall be located on any public right-of-way within a space

[1]It should be emphasized that Petitioner does not challenge Glendale's power to legislate reasonable "time, place and manner" regulations of the kind embodied in Sections 26-204(a)-(h) of the new ordinance. [Appendix C at pp. 23a-25a.] It is only the constitutional validity of the draconian and inequitable provisions of Sections 26-202(c) and 26-204(i) which Petitioner challenges. The provisions of the newsrack ordinance previously in effect in Glendale are set forth in Appendix D hereto.

> of two hundred feet in any direction within the same block of the same street; provided, however, that no more than sixteen newsracks shall be allowed on any one block. As used herein 'block' shall mean one side of a street between two consecutive interesecting streets.
>
> "In determining which newsracks shall be permitted to remain, the director of public works shall be guided solely by the following criteria:
>
> "(1) First priority shall be given to newsracks used for the sale of publications which have been adjudicated to be newspapers of general circulation for Los Angeles County, pursuant to the procedure set forth in Division 7, Article 2 of the California Government Code.[2]
>
> "(2) Second priority shall be given to newspaper racks used for the sale of daily publications (those published on five or more days in a calendar week) which have not been adjudicated to be newspapers of general circulation for Los Angeles County.
>
> "(3) Third priority shall be given to newsracks used for the sale of weekly publications (those published on at least one but less than five days in a calendar week) which have not been adjudicated to be newspapers of general circulation for Los Angeles County.
>
> "As between newspapers included within any single category of priority above, the director of

[2]The provisions of the California Government Code defining "newspapers of general circulation" are set forth in Appendix F hereto. As presiding Justice Roth noted in his dissenting opinion, The Weekly People could not meet the statutory requirements for that designation. [Appendix A at p. 16a, n.1.

public works shall also be guided by the following criteria of priorities whenever more than eight newsracks are proposed for any one location (two-hundred-foot space) or more than sixteen newsracks are proposed for any one block:

"(1) First priority shall be daily publications (published five or more days per week);

"(2) Second priority shall be publications published two to four days per week;

"(3) Third priority shall be publications published one day per week." Glendale Mun. Code §26-204(i) as amended. [Appendix C at pp. 25a-26a.][3]

At the time the new ordinance was enacted the competition for the public's attention on the public streets in Glendale was intense. Approximately thirty publications were sold from newsracks and as many as twenty newsracks could be found at some well situated locations. [C.T. 222-226; 242-250; 254-255[4].] No fewer than seven daily newspapers were sold by newsracks and four or more of these publications appeared together at fourteen locations. [C.T. 242-250.]

The Socialist Labor Party occupies a tenuous position in the City of Glendale. Its primary vehicle for the propagation of its political philosophy is The Weekly People, a non-commercial weekly newspaper whose sole purpose is to spread Petitioner's views. The Weekly People is distributed primarily by means of newsracks placed at carefully selected locations which have been

[3]The ordinance makes no mention at all of publications published less often than weekly; presumably they cannot utilize newsracks at all.

[4]"C.T." refers to the Clerk's Transcript on Appeal which is on file with the California Court of Appeal.

chosen to reach Petitioner's intended audience and to attain the highest circulation of the newspaper possible. [C.T. 222-226.] The new ordinance would place less popular and underfinanced publications like The Weekly People in the lowest priority, rendering their ability to utilize the public sidewalks of Glendale to disseminate their views precarious at best. Indeed, there are several key locations which already have more than eight newsracks containing publications in a higher priority than The Weekly People. [C.T. 222-226.]

Before Ordinance 4210 could be implemented Petitioner obtained a preliminary injunction. Thereafter, Petitioner successfully moved for summary judgment, and a judgment declaring that the ordinance violated both the Constitution of the United States and the Constitution of the State of California was entered in April, 1977. [Appendix E hereto.][5] Respondent appealed this judgment and on July 12, 1978, the Court of Appeal of the State of California, Second Appellate District, reversed the judgment, with one justice dissenting. [Appendix A hereto.]

The Court of Appeal appears to have based its decision solely on the precedents of this Court which it believed enabled Glendale to regulate newsracks so long as the regulations were "reasonable." [Appendix A at pp. 8a *et seq.*] In the Court of Appeal's view, the exercise of free expression by means of newsracks is not entitled to the same level of protection under the First or Fourteenth Amendments as is guaranteed to "pure speech." [*Id.* at pp. 8a-9a.] Drawing on analo-

[5]The trial court dissolved its preliminary injunction and did not issue a permanent injunction believing that the declaratory relief it granted would be sufficient to safeguard Petitioner's constitutional rights. [Appendix E at pp. 35a-36a.]

gies from this Court's decisions in the area of broadcast regulation (*e.g., National Broadcasting Co. v. U.S.*, 319 U.S. 190 (1943)), picketing (*e.g. National Broadcasting Co. v. Vogt, Inc.*, 354 U.S. 284 (1957)), and the distribution of leaflets on private property (*Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972)), the Court of Appeal reasoned that Glendale might permissibly ration its public sidewalks to some for the dissemination of publications by means of newsracks, while denying or severely limiting the availability of its sidewalks to others. [Appendix A at pp. 12a-15a.] The preferences granted to larger, more conventional publications were deemed by the Court as "simply a means of balancing the problem of public demand and its supply." [*Id.* at p. 15a.]

Although Glendale's newsrack ordinance may be well suited to accommodate the laws of supply and demand, these economic principles are alien to the "marketplace of ideas" guaranteed by the First and Fourteenth Amendments. It was only because the Court of Appeal misapplied the decisions of this Court and disregarded the decisions of other courts in this area that it was able to validate Glendale's overbroad and inequitable regulation of newsracks.

Reasons for Granting the Writ.

The dissemination of publications by means of newsracks on public sidewalks has become a major vehicle for the exercise of First Amendment rights. Distribution of publications through newsracks offer a number of advantages over other means of distribution, *see Philedalphia News, Inc. v. Borough C. etc. Swarthmore*, 381 F.Supp. 228, 237-238 (E.D. Pa. 1974), particularly for underfinanced groups like the Socialist Labor Party who do not have ready access to the more

conventional media. Indeed, for Petitioner distribution of The Weekly People by means of newsracks may be the only means of getting its message across. [C.T. 63-65.] For Petitioner, newsracks truly represent a crucial tool for the "poorly financed causes of little people." *Martin v. Struthers*, 319 U.S. 141, 146 (1943).

The number of reported decisions reviewing newsrack regulations is relatively few.[6] This Court has yet to consider the issue of the appropriate constitutional standards to govern the regulation of newsracks in the public forum. However, most courts which have ruled on this issue have applied the stringent standards applicable to attempts to regulate other forms of First Amendment activity in the public forum to attempts to regulate newsracks on the public sidewalks. *See, e.g., California Newspaper Publishers Assn, Inc. v. City of Burbank*, 19 Cal.App.3d at 53. ("First Amendment rights to distribute . . . newspapers and the public's right to buy and read them cannot be conditioned upon a particular method of transmitting information".) In contrast, the Court of Appeal below declined to adopt this mode of analysis and found the distribution of publications through newsracks to be subject to far greater regulation based upon the decisions of this

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[6]Petitioner believes that the following are all of the reported decisions concerning the regulation of newsracks: *Philadelphia News, Inc. v. Borough C. etc. Swarthmore, supra; Gannett Co. v. City of Rochester*, 69 Misc.2d 619, 330 N.Y.S.2d 648 (1972); *California Newspaper Publishers Assn., Inc. v. City of Burbank*, 51 Cal.App.3d 50, 123 Cal.Rptr. 880 (1975); *Remer v. City of El Cajon*, 52 Cal.App.3d 441, 125 Cal.Rptr. 116 (1975); *Carl v. City of Los Angeles*, 61 Cal.App.3d 265, 132 Cal.Rptr. 365 (1976); *Kash Enterprises, Inc. v. City of Los Angeles*, 19 Cal.3d 294, 138 Cal.Rptr. 53 (1977). However, Petitioner is aware of other unreported decisions, as well as pending litigation, both in California and elsewhere concerning the validity of newsrack regulations.

Court, indicating that the issue of the appropriate standards to be applied to the exercise of First Amendment rights in this area has not been clearly delineated by this Court's decisions. [Appendix A at pp. 12a-15a.]

This case presents in its most pristine form the issue of what constitutional standards govern the regulation of newsrack distribution and the nature and extent of the right to disseminate publications by means of newsracks in the public forum. A ruling by this Court is not only necessary to avoid the injustice to Petitioner caused by the Court of Appeal's validation of Glendale's ordinance, but is necessary to clarify the law in this burgeoning area of conflict between the exercise of First Amendment rights and the attempts by municipalities across the country to regulate the use of their public sidewalks.

1. Glendale Municipal Code Sections 26-202(c) and 26-204(i) Violate Petitioner's Right to Equal Protection of the Law as Guaranteed by the Fourteenth Amendment to the United States Constitution.

Glendale's attempt to parcel out the ability to exercise First Amendment rights on its public sidewalks on the basis of frequency of publication is directly contrary to "the dual mandate of the first amendment and the equal protection clause" that "neither the government nor any private censor may pick and choose between those views which may or may not be expressed." *Bonner-Lyons v. School Committee of the City of Boston*, 480 F.2d 442, 444 (1st Cir. 1973). As this Court explained in *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 96-97 (1972):

> "There is an 'equality of status in the field of ideas,' and government must afford all points of view an equal opportunity to be heard." *Id.* at 96.

By creating a three-tiered priority system for the allocation of its public sidewalks for newsrack distribution, Glendale has expressly favored certain publications over others. Ironically, Glendale's priority system has the untoward effect of favoring commercial purveyors of daily newspapers over non-commercial political publications like The Weekly People. Because this unequal treatment infringes on the exercise of First Amendment rights Glendale has the burden of justifying it as being necessary to a compelling interest that is within its power to regulate. *Williams v. Rhodes*, 393 U.S. 23, 31 (1968).

It is apparent that Glendale's priority scheme is wholly unrelated to any legitimate government interest, much less a compelling one. The preference given to favored publications has the *sole* effect of opening up the public forum to a select few, while severely limiting access to the public forum to others. As Presiding Justice Roth noted in his dissenting opinion in the Court of Appeal below:

> "[T]he suggestion by appellant that justification may be found in the fact that '[A] larger daily publication with a bona fide circulation list tends to reach more people with news and other articles of daily and long term events in general' is patently without merit." [Appendix A at p. 18a, n. 2.]

Neither the First Amendment nor the Fourteenth Amendment embrace economic principles of supply and demand which would permit a municipality to open up its public forum to popular publications while denying it to unpopular ones. *Niemotko v. Maryland*, 340

U.S. at 272; *Cf. City of Madison, Joint School District No. 8 v. Wisconsin Employment Relations Commission,* 424 U.S. 167, 175-176 (1976).

Although this Court's decisions upholding a right of equal access to traditional public forums have often involved explicit discrimination based on the content of the speech involved, *Police Department of the City of Chicago v. Mosley, supra,* this Court has carefully scrutinized regulations which, though purportedly neutral, nevertheless have the effect of abridging First Amendment rights. *See, e.g., Lovell v. Griffin,* 303 U.S. 444 (1937); *Saia v. New York,* 334 U.S. 558 (1948). Glendale's ordinance strikes at Petitioner's ability to use the public forum as directly as if The Weekly People had been expressly singled out for unfavorable treatment. Indeed the Ordinance is designed to place the publications of new or unpopular groups at an inherent disadvantage.

If the equal access principle embodied in the decisions of this Court and mandated by the First and Fourteenth Amendments may be so easily avoided it will not be long before The Weekly People—as well as other minority, non-commercial publications—will disappear from the public sidewalks. While Petitioner's loss will be substantial, it will be the First Amendment that suffers most.

2. Glendale Municipal Code Sections 26-202(c) and 26-204(i) Violate Petitioner's Freedom of Speech and Freedom of Press as Guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

This Court has repeatedly emphasized that:

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for the purpose of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. C.I.O.,* 307 U.S. 496, 515 (1939).

Attempts to regulate the use of the public streets and parks which impinge on the exercise of First Amendment activities have been required to be justified by compelling state interests and to be tailored as narrowly as possible to further those interests with the least possible intrusion on the exercise of First Amendment rights. *Grayned v. City of Rockford,* 408 U.S. 104, 115-117 (1972). Moreover, this Court has rejected arguments, such as the argument advanced by Respondent in this case, that a regulatory scheme is "reasonable" if it merely requires the exercise of First Amendment rights in alternative forums:

> "One is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. Irvington,* 308 U.S. 146, 163 (1939).

Application of the principles normally governing the exercise of First Amendment activities in the public forum requires the invalidation of Glendale's ordinance. The simple fact is that, particularly in light of the intense competition for newsrack locations in Glendale, an eight-rack limitation severely restricts Petitioner's ability to exercise its First Amendment rights. Unlike the precisely drawn "time, place and manner" regulations validated in *Kash Enterprises, Inc. v. City of Los Angeles,* 19 Cal.3d at 303-306, the eight-rack limitation in Section 26-206(i) bears little apparent relationship to the furtherance of any legitimate, much less com-

pelling, government interest. Neither Glendale nor the Court of Appeal below made any attempt to justify the eight-rack limitation by establishing such a relationship.

Moreover, Section 26-206(i) provides no mechanism for choosing among applicants within a given subpriority group (*e.g.*, Publications in the third priority which publish on a weekly basis) for the allocation of any remaining locations after the publications in higher priority groups have made their choices. Although the current Director of Public Works has created a random choice procedure in such situations, the Ordinance does not require such a procedure. The granting of unbridled discretion to administrative officials to grant or deny access to the public forum has regularly been struck down by this Court. *Saia v. New York*, 334 U.S. 558, 560-562 (1948); *Shuttlesworth v. Birmingham*, 394 U.S. 147, 153 (1969).

Unless the distribution of publications by means of newsracks on the public sidewalks is somehow subject to less protection than other forms of expressive activity in the public forum, the Court of Appeal's decision is plainly wrong and Sections 26-202(c) and 26-204(i) must be struck down.

Conclusion.

For the reasons stated above, it is respectfully submitted that this petition for a writ of certiorari be granted.

Respectfully submitted,

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By FRED OKRAND,
Attorneys for Petitioner.

APPENDIX A.

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Two.-

Socialist Labor Party, an unincorporated association, Plaintiff and Respondent, vs. City of Glendale, a municipal corporation, Defendant and Appellant. 2D Civ. No. 52122 (Sup.Ct.No. C130538).

Filed: July 12, 1978.

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert Weil, Judge. Affirmed.

Robin Meadow, Mark A. Spiegel; Fred C. Okrand, ACLU Foundation of Southern California, for Plaintiff and Respondent.

Frank R. Manzano, City Attorney, By: Scott H. Howard, for Defendant and Appellant.

PROCEDURAL BACKGROUND:

Respondent, Socialist Labor Party of America, has published a newspaper, "The Weekly People" since 1891. It continues to publish it. On July 22, 1975, respondent filed its complaint for declaratory relief and injunction wherein it alleged that certain sections of the Glendale Municipal Code as amended to control newsracks did unconstitutionally violate the freedom of expression and freedom of press guaranteed to respondent by the First and Fourteenth Amendments to the Constitution of the United States, and by section 2, article I of the Constitution of the State of California, as well as respondent's right to equal protection under the Fourteenth Amendment and section 7, article I of the United States and California Constitutions.

A preliminary injunction restraining the implementation or enforcement of Section 26-204(i) was granted on August 22, 1975. On March 23, 1977, respondent filed its notice of motion for summary judgment. That motion was heard April 21, 1977 and resulted in the trial court's determination that Sections 26-202(c) and 26-204(i) are unconstitutional. This appeal followed.

FACTS:

Prior to June 24, 1975, Section 26-204 of the Municipal Code of the City of Glendale prescribed certain standards pertaining to the size, apperance and physical placement of newsracks located in various areas of that city. On that date, the City of Glendale (appellant) adopted Ordinance No. 4210 which, among other things, amended the section by adding subdivision (i) as follows:

> "i. No more than eight newsracks shall be located on any public right-of-way within a space of two hundred feet in any direction within the same block of the same street; provided, however, that no more than sixteen newsracks shall be allowed on any one block. As used herein 'block' shall mean one side of a street between two consecutive intersecting streets.
>
> "In determining which newsracks shall be permitted to remain, the director of public works shall be guided solely by the following criteria:
>
> "(1) First priority shall be given to newsracks used for the sale of publications which have been adjudicated to be newspapers of general circulation for Los Angeles County, pursuant to the procedure set forth in Division 7, Article 2 of the California Government Code.

> "(2) Second priority shall be given to newsracks used for the sale of daily publications (those published on five or more days in a calendar week) which have not been adjudicated to be newspapers of general circulation for Los Angeles County.
>
> "(3) Third priority shall be given to newsracks used for the sale of weekly publications (those published on at least one but less than five days in a calendar week) which have not been adjudicated to be newspapers of general circulation for Los Angeles County.
>
> "As between newspapers included without any single category of priority above, the director of public works shall also be guided by the following criteria of priorities whenever more than eight newsracks are proposed for any one location (two-hundred-foot space) or more than sixteen newsracks are proposed for any one block:
>
> "(1) First priority shall be daily publications (published five or more days per week);
>
> "(2) Second priority shall be publications published two to four days per week;
>
> "(3) Third priority shall be publications published one day per week."

The Ordinance also amended Section 26-202 to provide:

> *"Sec. 26-202. Registration of Location.*
>
> a. No person shall install or maintain any newsrack which in whole or in part rests upon, in or over any public sidewalk or parkway without first notifying the director of public works of the following:

"(1) The location of each newsrack to be installed or maintained in the city by the applicant; and

"(2) The name, address and telephone number of the applicant.

"b. No more than one notification shall be required per applicant, regardless of the number of newsracks the applicant maintains in the city.

"c. From the above information the director of public works shall designate locations and shall be guided therein solely by the standards and criteria set forth in section 26-204 hereof. Such application may be granted either in whole or in part when more than one location is proposed by the applicant, and in any event, when denial is solely as to location, it shall be without prejudice to amend such application to state a different location or locations."

OUR DECISION AND HOLDING:

The ordinance of the City of Glendale as amended is reasonable and constitutional on its face. There is no invidious discrimination against any particular class of newspaper and specifically none against the Socialist Labor Party. There is no unequal protection of the law as the ordinance is applied to the plaintiff-respondent in this case.

DISCUSSION:

We recognize that the exercise of free speech is a fundamental right generally accorded preferential treatment and protection. But like any activity it is not absolute and in an orderly yet just society the time, place, and means of expression by an individual must sometimes be limited so as not to unduly interfere with the right of others to go about their lawful business. When the exercise of free speech does so interfere, it becomes a nuisance. Nothing in the First Amendment requires the community to tolerate a public nuisance which adversely affects its health and safety. The present day use of the ubiquitous newsrack has created such a nuisance in many cities by clogging the sidewalks especially at street corners, entrances to theaters, restaurants, and other businesses. The ordinance of the City of Glendale is a reasonable effort to reduce the problem, yet to balance the solution so as to not impinge upon the right of free speech by even the smallest voice.

We need not cast afar for authority. In *Kash Enterprises, Inc. v. City of Los Angeles,* 19 Cal.3d 294, the California Supreme Court while recognizing the fundamental nature of the right of free speech involved by its quotation of *Hague v. C.I.O.* (1939) 307 U.S. 496, 515, nonetheless held that the City of Los Angeles could properly enact ordinances regulating the distribution and method of maintaining newsracks on the city streets. The court there upheld the Los Angeles City ordinance. In doing so it noted with apparently total approval the point made in *Remer v. City of El Cajon,* 52 Cal.App.3d 441, that the "city *might consider* controlling the number, size, construction, placement and appearance of the vending devices in order to achieve its goal without unduly restricting the free dispersal of information. . . ." (Emphasis added.) *Remer, supra,* 52 Cal.App.3d at p. 444; *Kash, supra,* 19 Cal.3d at p. 303.) *Kash* not merely approves of the dicta of *Remer,* but declares "localities *retain authority* to impose reasonable 'time, place and manner' regulations on the use of newsracks, so as

to protect legitimate state interests while preserving First Amendment rights. . . ." (Emphasis added.) (*Kash, supra,* 19 Cal.3d at p. 302.) We recognize that particular portions of the Los Angeles City ordinance involved in *Kash* were more definitive with reference to regulation of size, weight, number and prohibition of particular types of placement than is the amendment at bench. But that difference does not make the Glendale ordinance invalid. The Los Angeles ordinance involved in *Kash* is but one approved method, not the only one which can be used.

As stated in *Kash* at page 305, "legislation should be construed, if reasonably possible, to preserve its constitutionality [citation]. . . ." There the court applied this guide in determining that the words of the statute "attractive condition" meant "clean and neat" in the ordinance and that the municipal inspectors would not misuse the term simply as a subterfuge to get rid of "objectionable" material. Similarly, we must view the Glendale City ordinance as one whereby the Director of Public Works will apply the mechanical guidelines without reference to content, appearance, or apparent popularity. The guidelines in the ordinance are specifically spelled out and leave no "unfettered" discretion to the Public Works Director. He must assign the available spaces in the order of the three well-described priorities: (1) publications of adjudicated general circulation whether dailies or weeklies, (2) other dailies, and (3) other weeklies. We cannot presume that the law will not be obeyed. We must presume that the Director of Public Works will assign the spaces on a first-come, first-serve basis, a drawing by lot, or other fair method, whereby all will share in the same opportunity in proportion to their frequency of

publication. At bench, the ordinance is unlike that part of the Los Angeles City ordinance (the same ordinance considered in *Kash*) which was held invalid in *Carl v. City of Los Angeles,* 61 Cal.App.3d 265. There the particular parts of the Los Angeles ordinance aimed at the content of the publication were held to be invalid but separable from the other parts of the ordinance. In part, the holding declared that the ordinance attempting to control content was a matter that had been preempted by state laws relating to obscenity and free speech.

Again, by contrast the ordinance is unlike that in *California Newspaper Publishers Assn., Inc. v. City of Burbank,* 51 Cal.App.3d 50, where the ordinance limited distribution to only about one percent of the total municipal area. In addition that ordinance limited racks to a particular place, a mall, and it allowed no other racks in other parts of the city. The ordinance clearly was too severe and restrictive a means to deal with the problem of the proliferating newsracks.

We should not completely abandon the concept that the right of free speech is personal. We are mindful that in *California Newspaper Publishers Assn., Inc. v. City of Burbank, supra,* 51 Cal.App.3d at page 53, the rejected argument was that the First Amendment does not apply to newspapers or newsracks as follows:

> " 'The right to utilize public streets and sidewalks for communicating thoughts and views is an *in personam* right—a right accorded to persons and not to inanimate devices, and must be personally exercised rather than through unattended racks or other devices placed on public sidewalks and parkways.' "

The court there did not agree, and in reply said:

> "Plaintiffs' First Amendment rights to distribute its newspapers and the public's right to buy and read them cannot be conditioned on a particular method of transmitting information. (Cf. *Weaver v. Jordan*, 64 Cal.2d 235, 244-245. . . .) In any event defendant's theory was resolved against it in *Dulaney v. Municipal Court*, 11 Cal.3d 77, 84 . . . , which held that the 'posting of notices on utility poles is a form of expression coming within the protective umbrella of the First Amendment.' "

While we recognize that the foregoing statement in *California Newspaper Publishers Assn., Inc. v. City of Burbank*, and *Dulaney v. Municipal Court*, 11 Cal.3d 77, expresses the present view and law of the State of California, that view and that law should be reconsidered in light of the fact that it does not absolutely square with the view of the United States Supreme Court. That highest court does in fact recognize that some methods of distribution or expression of free speech or free press may so affect others' fundamental rights that because of the means utilized the exercise of the fundamental right of speech by those particular methods may be limited. In other words, the means of expression or transmission can be like conduct which is a means of expression. Consideration of conduct or means of communication removes the problem from one of determining the limitations on *pure speech* and changes the focus and consideration to one of determining how far the particular method or means of communication may be limited due to some other equally important consideration to be balanced on the other side of the constitutional ledger. As will be noted

below limitations and restrictions on many forms of expression or means of communicating speech have been held valid. As the United States Supreme Court has observed: "We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by *pure speech*." (Emphasis added.) (*Cox v. Louisiana*, 379 U.S. 536, 555.) "The conduct which is the subject of this statute—picketing and parading—is subject to regulation even though intertwined with expression and association. The examples are many of the application by this Court of the principle that certain forms of conduct mixed with speech may be regulated or prohibited. . . ." (*Cox v. Louisiana, supra*, 379 U.S. at p. 563.) The state interest thus justifying regulation or prohibition includes prevention of *obstruction of streets or sidewalks*. (*Cox v. Louisiana, supra*, 379 U.S. at pp. 553-558.) Irrespective of whether or not we may or some other court should re-examine the in-personam-right argument rejected in *Dulaney v. Municipal Court*, 11 Cal.3d 77, the fact remains that there is only so much space on a sidewalk and no one has a right to a total unregulated use of the sidewalk simply because he seeks to exercise not pure speech but a particular means of dissemination of speech.

In cases such as the present, it is not easy at all times to keep separate the distinction between a case involving free speech and a case involving simply a commercial manner of exploiting free speech. But there is a difference. That difference is critical. When the

law, ordinance, or other rule is aimed directly at *pure speech* or *content*, it is examined for constitutionality by strait and narrow measures, and almost no interference is allowed. On the other hand, when only the mechanical means or particular time or place of dissemination is involved, some reasonable limitation is recognized as necessary because the right of free speech and press are not the only rights to be enjoyed by the citizenry. The right to a good night's sleep is reason enough to silence the sound truck at night. This case is not a case of pure free speech. It is a case of *selling* newspapers—for a profit. Even if the publications were being given away free—a factor that is not in issue here—the result and the analyses would be the same. We are dealing with the business end or distributing activity of the publications. This distinction between the right to say and the right to sell is significant. (See the Dissent of Justice Mosk in *Weaver v. Jordan*, 64 Cal.2d 235.)

There is no absolute right to use the sidewalk for the purpose of peddling newspapers, irrespective of how many newspaper peddlers there are and irrespective of how much space they use and encroach upon the sidewalk. Since there is limited space combined with a proliferation of newsracks and those who would use them, the sidewalk space must be allocated under the same principle that the radio and television airwaves are allocated. Because there are only a limited number of newsrack spaces—some will receive and some will not receive a space through which they can exercise their right of speech. In the radio broadcasting cases cited below—the Supreme Court of the United States has recognized this fact of occasional denial, yet has held such licensing regulations valid.

The focus of the court in *California Newspaper Publishers Assn., Inc. v. City of Burbank, supra,* 51 Cal.App.3d at pages 53, 54, was the "blanket prohibition." The one percent allocated space was grossly inadequate. Here there is no such limitation but simply an effort to utilize some reasonable means of keeping the sidewalks from being overrun by the newsracks.

The express language of the cases of *Remer, supra,* and *Kash, supra,* encourages municipal ordinances to control the number, location, and hazards created by newsracks. Accordingly, the City of Glendale should not be nor should any other municipality be discouraged, frustrated, or thwarted in its efforts to meet this real problem. Reasonable minds might differ on the best way to solve the problem. But simply because the particular ordinance could possibly be misused as applied later is no reason to declare it unconstitutional on its face under the facts at bench.

The ordinance as indicated contains three separate classifications. They are mechanical, they do not leave anything to the discretion of the Public Works Director other than to allocate the spaces on a first-come, first-serve basis in each of the three groups. The first classification refers to the Government Code definition of a newspaper of general circulation. Examining the Government Code, we find that any newspaper may seek adjudication as a newspaper of general circulation if it has a subscription list of paying subscribers; second, it is established and published in the district at least weekly for three years; third, it has a substantial distribution to paid subscribers; and fourth, it has news coverage of 25 percent of total column inches. These standards are not invidious or suspect classifications. While it is true that respondent's the People's Weekly

may not be able to qualify because it does not contain 25 percent of its column print in news coverage, the ordinance was not aimed intentionally at the Weekly. Simply because it does not fit the first classification does not mean that it will automatically be denied any space under the third classification. The definitions used for the ordinance in no way intend to describe or control the content of any newspaper. Thus, it is totally unlike an attempt to regulate through a ruse or device (such as a tax) or other effort by referring to a definition or classification, which is aimed at a particular disliked opponent, group or class. (For example, see *Grosjean v. American Press Co.*, 297 U.S. 233.)

For our guidance and by analogy we refer to the decisions of the United States Supreme Court dealing with this constitutional issue. That court recognizes that there are many forms and means of communication which because of their methods and their effects on others' rights are subject to regulation and restriction even though they involve and are a form of free speech or the expression of ideas. For example, not only is mass picketing with its frequent potential for violence subject to restriction, but even peaceful picketing may be controlled and limited. While no blanket prohibition against picketing is legal, *Thornhill v. Alabama*, 310 U.S. 88, restrictions on certain times, places, and purposes of picketing have been held proper. (*Teamsters Union v. Vogt, Inc.*, 354 U.S. 284, 293; *Giboney v. Empire Storage Co.*, 336 U.S. 490; *Teamsters Union v. Hanke*, 339 U.S. 470; *Plumbers Union v. Graham*, 345 U.S. 192.) Another illustration of limitations are the statutory limitations upon the right to broadcast by radio or television. Such right is of necessity limited

because of the limited number of airwaves or frequencies or channels. The government licenses access because of such limitations. It grants to some and it denies to others. Scarcity of the airwaves is a unique characteristic which allows this restriction. (*Nat. Broadcasting Co. v. U.S.*, 319 U.S. 190. See also, *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 375-379; *Radio Comm'n. v. Nelson Bros. Co.*, 289 U.S. 266; *Federal Comm'n. v. Broadcasting Co.*, 309 U.S. 134; *Commission v. Sanders Radio Station*, 309 U.S. 470, *F.C.C. v. American Broadcasting Co.*, 347 U.S. 284; *Farmers Union v. WDAY*, 360 U.S. 525.) Another example of rationing space or zone is in the restriction of locations for movie theaters by a municipality. (See *Young v. American Mini Theatres*, 427 U.S. 50.)

Another, perhaps more analogous and closer situation, is the right to distribute leaflets on private property. The private property rights (the right of the commercial owners to allow their patrons to use the property freely and without being accosted by the distributors of leaflets) was sufficient to prohibit distribution in *Lloyd Corp. v. Tanner*, 407 U.S. 551. Similarly, the right of the walking public to use the public sidewalks and public areas is of sufficient importance so as to require fair consideration, recognition and protection in determining the extent to which "free speech" shall warrant a particular means of distribution and to what extent a particular method of distribution or expression may be reasonably limited.

We may ask: who else is free to peddle his wares on the public sidewalks? Who else is free to encroach at nearly every hotel, restaurant and threatre entrance and to sell his wares free from paying rent or being

restricted by zoning laws or other reasonable regulations? "The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others . . . ." (*Associated Press v. Labor Board,* 301 U.S. 103, 132.) At bench, the newspaper racks invade the public easement and have taken a portion of the public sidewalks for themselves totally without approval or permission of the public, the walking public in particular.

A public street is precisely that. It is a place for all of the public not subject to appropriation by any individual or select, self-appointed group claiming great constitutional fundamental privilege superior to the rights of all others. Some publications seem to believe that they have a constitutional right to a certain portion of the public sidewalk in fee and in perpetuity to place and keep their newsracks thereon to the exclusion of the pedestrians. Parts of the sidewalks have been taken over by the newsracks of such newspapers and magazines. They imply that no one may say them nay. Thus, the newspapers by some contortion of the right of free speech would seek to gain a fee title ownership in a part public walkway on the argument that because of free speech its racks cannot be removed. This is wrong. Nothing ever said by the broad language in *Hague v. C.I.O., supra,* 307 U.S. 496, was directed or intended to be so expanded. Such view is contrary to law because private persons may not obtain a prescriptive right against the public fee. (Civ. Code, § 1007, *Visalia v. Jacob,* 65 Cal. 434; *People v. Pope,* 53 Cal. 437.) Although ancient, these cases are still the law; the public has the right to keep its sidewalks open and undiminished by the claims

of the appropriating newsracks. Irrespective of the holding and statement in the *Dulaney* case, the United States Supreme Court in the cases above set forth establishes that although the First Amendment guarantees free speech, it does not, however, make every vehicle and means of communication by which free speech can be exercised, constitutionally equal nor constitutionally as fundamentally recognizable as pure speech. The freedom is a personal one. When a person descends from the soapbox and places there instead a newsrack to be left all week long it does not follow that placement of the newsrack is clothed with the same degree of protection and assurance that the speech and speaker himself on a soapbox would enjoy.

At bench, the fact that the ordinance allocates a preference to the daily does not make that a suspect classification nor deprive a weekly of equal protection. It is simply a means of balancing the problem of public demand and its supply. Moreover, in this particular case the court simply granted summary judgment to respondent on the basis that the statute was unconstitutional. It has not been demonstrated but is an issue of fact to be resolved upon trial whether or not the ordinance will in fact favor the dailies to the detriment or actual exclusion of the weeklies.

The judgment is reversed.

CERTIFIED FOR PUBLICATION

/s/ Beach
BEACH, *J.*

I concur:

/s/ Compton
COMPTON, *J.*

DISSENT

I dissent.

In view of all the facts associated with the instant matter and my understanding of judicial decisions consistently developed over an extended period of time, I am unable to join the majority's reasoning. It is not now and never has been the case that a governmental authority within appropriate constitutional boundaries may fashion a law under its police power the effect of which is to suppress free expression by invidious discrimination of the kind I believe is here involved and, under the guise of the public welfare, to silence certain organs of the press on the basis of their inability to compete economically with others in the marketplace.

The Weekly People, published by respondent continuously since 1891, is a non-commercial publication not accorded the designation of a "newspaper of general circulation." (See Government Code, §§ 600, et seq.)[1] Its conceded purpose is the promotion of a political philosophy which may or may not be palatable to the majority of persons. As its name implies, it is published only once a week. The record discloses it is one of many, perhaps 30 or more, publications vying for public attention and acceptance by newsrack sale and distribution located upon the sidewalks of the City of Glendale. It probably has fewer subscribers compared to the other publications competing for the newsrack mode of distribution but that factor should not deprive it of a public means of increasing its circulation.

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[1]Since the purpose of the Weekly People is to publish political views rather than "local or telegraphic news and intelligence of a general character," it could not meet the statutory definition of that designation. (See Gov. Code § 6008.)

The ordinance in question purports to limit the number of newsracks at any given location to eight. Under its formula for allocating use of that number of newsracks, respondent must in all events accept a priority for publications more frequent than its own or which have been adjudicated newspapers of general circulation for Los Angeles County. Assuming any vacancy following implementation of this formula, it must then compete for available space with other publications limited in frequency, in a fashon not even described. Such a restriction upon constitutionally safeguarded rights is, in application to respondent if not upon its face, unacceptable.

> "* * * [w]e must begin by recognizing that the right to distribute newspapers and other periodicals on the public streets lies at the heart of our constitutional guarantees of freedom of speech and freedom of the press. As both the United States Supreme Court and this court have emphasized on numerous occasions: 'Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for the purpose of assembly, communicating thoughts between citizens, and discussing public questions; (*Hague v. C.I.O.* (1939) 307 U.S. 496, 515 * * *." (*Kash Enterprises, Inc. v. City of Los Angeles* (1977) 19 Cal.3d 294, 300.)

While it is true that newsracks are not totally immune from regulation by municipalities (see *Remer v. City of El Cajon* (1975) 52 Cal.App.3d 441), it is the case that "* * * numerous courts—both in California and out-of-state—have in recent years uniformly held that First Amendment protections are applicable to

the public distribution of newspapers and periodicals through newsracks and that, as a consequence, municipalities lack constitutional authority to foreclose *all* use of such newsracks on their streets and sidewalks. (See *California Newspaper Publishers Assn., Inc. v. City of Burbank* (1975) 51 Cal.App.3d 50 * * *; *Remer v. City of El Cajon* (1975) 52 Cal.App.3d 441 * * *; *Philadelphia News., Inc. v. Borough C., etc., Swarthmore* (E.D.Pa. 1974) * * *; *Gannett Co. v. City of Rochester* (1972) 69 Misc.2d 619 * * *.)" (*Kash Enterprises, Inc. v. City of Los Angeles, supra,* at p. 302.) In my judgment the same result is required where, as here, by invidious discrimination having no justification in reason,[2] some publications are foreclosed from circulation through newsracks.

Nor is it sufficient that respondent might use newsracks at locations other than those now being utilized. (See *Bonner-Lyons v. School Committee of the City of Boston* (1st Cir. 1973) 480 F.2d 442.) Whatever problem is created by the proliferation of newsracks in the City of Glendale, it cannot be attributed uniquely to respondent and there is no basis for requiring one or more but not all publications to effect a solution through their removal. (Cf. *Gannett Co. v. City of Rochester* (1972) 30 N.Y.S 2d 648.) Appellant contends that Ordinance No. 4210 "is most probably the

[2]The suggestion by appellant that justification may be found in the fact that "A larger daily publication with a bona fide circulation list tends to reach more people with news and other articles of daily and long term events in general" is patently without merit.

last effort by a municipality to successfully weave the fine line between municipal police power regulation and First Amendment rights." The last effort of the Glendale City Council does not remotely impair the well settled principles re-enumerated by *Kash, supra.* Accordingly, I would affirm the judgment.

/s/ Roth
ROTH, *P.J.*

Modification of Opinion.

In the Court of Appeal of the State of California, Second Appellate District, Division Two.

Socialist Labor Party, an unincorporated association, Plaintiff and Respondent, vs. City of Glendale, a municiptal corporation, Defendant and Appellant. 2d Civil 52122 (Sup.Ct.No. C130538).

Filed: August 11, 1978.

THE COURT:

Good cause appearing therefor the opinion filed on July 12, 1978, is hereby modified as follows:

Page 1, second line after caption, the word Affirmed should be changed to Reversed.

Page 17, second paragraph, line 9, which reads "*Board*, 301 U.S. 103.) At bench, . . ." should read "*Board*, 301 U.S. 103, 132.) At bench, . . ."

Page 18, line 9 from top of page, which reads "part the public walkway on the argument . . ." should read "part of the public walkway on the argument . . ."

Page 18, line 15 from top of page which reads "§ 10007; *Visalia v. Jacob*, . . ." should read "§ 1007; *Visalia v. Jacob*, . . ."

Page 1, of Dissent, last line of text which reads "circulation." (See Government Code, §§ 600, et seq.)[1]" should read "circulation." (See Gov. Code, §§ 6000, et seq.)[1]"

Page 5, of Dissent, first line at top of page which reads "30 N.Y.S. 2d 648.) Appellant . . ." should read "300 N.Y.S. 2d 648.) Appellant . . ."

CERTIFIED FOR PUBLICATION

APPENDIX B.

Order Denying Hearing, After Judgment by the Court of Appeal, 2d District, Division 2, Civil No. 52122.

In the Supreme Court of the State of California in Bank. Socialist Labor Party, v. City of Glendale.

Filed Oct. 4, 1978.

Respondent's petition for hearing DENIED.

Bird, C.J., and Mosk, J., are of the opinion that the petition should be granted.

The Reporter of Decisions is directed not to publish in the Official Reports the opinion in the above entitled cause filed July 12, 1978 and appears in 82 Cal. App. 3d 772. (Cal. Const., Art., VI; section 14; Rule 976, Cal. Rules of Court.)

Bird, C.J., and Clark, J., are of the view that the opinion should remain published.

Bird, *Chief Justice*

APPENDIX C.

Ordinance No. 4210.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE ADDING NEW SECTION 26-202 TO, AND AMENDING SECTIONS 26-204, 26-205 AND 26-206 OF THE GLENDALE MUNICIPAL CODE, 1964, PERTAINING TO STANDARDS FOR INSTALLATION, MAINTENANCE AND OPERATION OF NEWSRACKS.

THE COUNCIL OF THE CITY OF GLENDALE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 26-202 is hereby added to Article X of Chapter 26 of the Glendale Municipal Code, 1964, to be numbered, titled and to read as follows:

Sec. 26-202. Registration of Location.

a. No person shall install or maintain any newsrack which in whole or in part rests upon, in or over any public sidewalk or parkway without first notifying the director of public works of the following:

(1) The location of each newsrack to be installed or maintained in the city by the applicant; and

(2) The name, address and telephone number of the applicant.

b. No more than one notification shall be required per applicant, regardless of the number of newsracks the applicant maintains in the city.

c. From the above information the director of public works shall designate locations and shall be guided therein solely by the standards and criteria set forth in section 26-204 hereof. Such application may be

granted either in whole or in part when more than one location is proposed by the applicant, and in any event, when denial is solely as to location, it shall be without prejudice to amend such application to state a different location or locations.

SECTION 2. Sections 26-204, 26-205 and 26-206 of the Glendale Municipal Code, 1964, are hereby amended to be numbered, titled and to read as follows:

Sec. 26-204. Standards for installation, maintenance and operation.

Any newsrack which in whole or in part rests upon, in or over any public sidewalk or parkway, shall comply with the following standards:

a. No newsrack shall exceed five feet in height, thirty inches in width, or two feet in thickness.

b. Newsracks shall only be placed near a curb or adjacent to the wall of a building. Newsracks placed near the curb shall be placed no less than eighteen inches nor more than twenty-four inches from the edge of the curb. Newsracks placed adjacent to the wall of a building shall be placed parallel to such wall and not more than six inches from the wall. No newsrack shall be placed or maintained on the sidewalk or parkway opposite a newstand or another newsrack.

c. No newsrack shall be chained, bolted or otherwise attached to any property not owned by the owner of the newsrack or to any permanently fixed object.

d. Newsracks may be chained or otherwise attached to one another; however, no more than three newsracks may be joined together in this manner, and a space of no less than eighteen inches shall separate each group of three newsracks so attached.

e. No newsrack or group of attached newsracks allowed under paragraph d. hereof shall weigh, in the aggregate, in excess of one hundred thirty-five pounds when empty.

f. Notwithstanding the provisions of subsection b. of section 26-201, no newsrack shall be placed, installed, used or maintained:

(1) Within five feet of any marked crosswalk;

(2) Within fifteen feet of the curb return of any unmarked crosswalk;

(3) Within five feet of any fire hydrant, fire call box, police call box or other emergency facility;

(4) Within five feet of any driveway;

(5) Within five feet ahead of, and twenty-five feet to the rear of any sign marking a designated bus stop;

(6) Within six feet of any bus bench;

(7) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six feet;

(8) Within three feet of any area improved with lawn, flowers, shrubs or trees or within three feet of any display window of any building abutting the sidewalk or parkway or in such manner as to impede or interfere with the reasonable use of such window for display purposes; or

(9) Within fifty feet of any other newsrack containing the same publication.

g. No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of the newspaper or news periodical sold therein.

h. Each newsrack shall be maintained in a clean, neat and attractive condition and in good repair at all times.

i. No more than eight newsracks shall be located on any public right-of-way within a space of two hundred feet in any direction within the same block of the same street; provided, however, that no more than sixteen newsracks shall be allowed on any one block. As used herein "block" shall mean one side of a street between two consecutive intersecting streets.

In determining which newsracks shall be permitted to remain, the director of public works shall be guided solely by the following criteria:

(1) First priority shall be given to newsracks used for the sale of publications which have been adjudicated to be newspapers of general circulation for Los Angeles County, pursuant to the procedure set forth in Division 7, Article 2 of the California Government Code.

(2) Second priority shall be given to newsracks used for the sale of daily publications (those published on five or more days in a calendar week) which have not been adjudicated to be newspapers of general circulation for Los Angeles County.

(3) Third priority shall be given to newsracks used for the sale of weekly publications (those published on at least one but less than five days in a calendar week) which have not been adjudicated to be newspapers of general circulation for Los Angeles County.

As between newspapers included within any single category of priority above, the director of public works shall also be guided by the following criteria of priorities whenever more than eight newsracks are proposed for

any one location (two-hundred-foot space) or more than sixteen newsracks are proposed for any one block:

(1) First priority shall be daily publications (published five or more days per week);

(2) Second priority shall be publications published two to four days per week;

(3) Third priority shall be publications published one day per week.

j. No newsrack shall be used for the sale, offer for sale, advertisement or display of any publication which is prohibited by the laws of the State from sale or distribution to minors unless such newsrack is maintained and controlled in the presence of an attendant, which attendant is an adult and has the authorization and ability to prevent the purchase of such publication by a minor.

Sec. 26-205. Newsrack identification required.

Within thirty days after this article X becomes effective, every person or other entity which places or maintains a newsrack on the streets of the City of Glendale shall have his or its name, address and telephone number affixed thereto in a place where such information may be easily seen. Prior to the designation of a location by the director of public works under section 26-202 hereof, the applicant shall present evidence of compliance with this section.

Sec. 26-206. Newsrack violations.

a. Any newsrack installed, used or maintained in violation of the provisions of this article X may be summarily removed and stored in any convenient place by any public body or officer. Such body or officer shall take reasonable steps to notify the owner thereof.

Upon failure of the owner to claim such newsrack and pay the expenses of removal and storage within thirty days after such removal, such newsrack shall be deemed to be unclaimed property in possession of the police division and may be disposed of pursuant to the provisions of sections 19-35 through 19-45 of this Code.

b. In the case of violations of this article X relative to restrictions upon attachments of newsracks to property other than that owned by the owner of the newsrack, to fixed objects or each other, and upon location of newsracks, any public body or officer may, as an alternative to removal under subsection a. hereof, remove such attachment and move such rack or racks in order to restore them to a legal condition.

c. The director of public works shall cause inspection to be made of the corrected condition or of a newsrack reinstalled after removal under this section. The owner of said newsrack shall be charged a ten dollar inspection fee for each newsrack so inspected, which charge shall be in addition to all other fees and charges provided for in this Code.

SECTION 3. *Severability.* If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases hereof be declared invalid or unconstitutional.

SECTION 4. The Council of the City of Glendale hereby finds and declares that the use and maintenance of newsracks on public sidewalks has proliferated to such an alarming extent that their existence and presence in unlimited and uncontrolled numbers constitutes a public nuisance in that freedom of pedestrian access along and upon the sidewalks is seriously impaired, and sometimes is totally blocked in some directions and places; parking spaces are often blocked on the sidewalk side of the parked vehicle, thereby forcing passengers to exit such vehicles from the hazardous roadway side of the vehicle, or discouraging the use of such parking space altogether; free and clear view of moving vehicles and pedestrians at intersections is often impaired or blocked altogether increasing the possibility of traffic accidents; and property values are diminished in that such newsracks are unattractive and detract from and discourage the maintenance of otherwise aesthetically attractive, adjacent real property, landscaping and improvements, thus contributing to the economic and social decay of the neighborhoods in which such newsracks are located.

The Council of the City of Glendale hereby further finds and declares that the uncontrolled and unsupervised maintenance of newsracks on public sidewalks containing newspapers and news periodicals that contain photographs and drawings, visible to the public view while in the said newsracks, of nude human bodies, together with articles, bylines and advertisements of prurient interest, upon the sidewalks of the said City

in such manner as to make such material readily available to children and youth constitutes a public nuisance in that such practice creates a condition wherein enforcement of the State law regarding the prohibition of the sale of Harmful Matter to such children and youth becomes extremely difficult.

SECTION 5. Grace period. The Director of Public Works shall not be required, nor shall it be required of any other public body or officer, to remove or to cause the removal of any existing newsracks from a public sidewalk or parkway by reason of the failure of the owners thereof to comply with the provisions of Section 26-202, until fifteen days from the effective date of this ordinance have first elapsed. The Director of Public Works is hereby directed to send written notice as soon hereafter as practicable to the owners, occupiers or users of all existing newsracks located on a public sidewalk or parkway in Glendale of the content of this ordinance.

Passed by The Council of the City of Glendale on the 24th day of June, 1975.

/s/ Richard A Garcin
Mayor

ATTEST:

/s/ Frank M. Usher
CITY CLERK

APPENDIX D.

Article X. Newsracks.

Sec. 26-200. Definitions.

Definitions as used in this section:

a. "Newsracks" shall mean any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or news periodicals.

b. "Street" shall mean all that area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, alleys and sidewalks.

c. "Roadway" shall mean that portion of a street improved, designed, or ordinarily used for vehicular travel.

d. "Parkway" shall mean that area between the sidewalks and the curb of any street, and where there is no sidewalk, that area between the edge of the roadway and the property line adjacent thereto. Parkway shall also include any area within a roadway which is not open to vehicular travel.

e. "Sidewalk" shall mean any surface provided for the exclusive use of pedestrians. (Ord. No. 4108, § 1 (part).)

Section 26-201. Newsracks prohibited.

a. No person shall install, use or maintain any newsrack or other structure which projects onto, into or over any part of the roadway of any public street, or which rests, wholly or in part, upon, along or over any portion of the roadway of any public street.

b. No person shall install, use or maintain any newsrack which in whole or in part rests upon, in

or over any public sidewalk or parkway, when such installation, use or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other objects permitted at or near said location, or when such newsrack interferes with the cleaning of any sidewalk by the use of mechanical sidewalk cleaning machinery. (Ord. No. 4108, § 1 (part).)

Sec. 26-204. Standards for maintenance and installation.

Any newsrack which in whole or in part rests upon, in or over any public sidewalk or parkway, shall comply with the following standards:

a. No newsrack shall exceed five feet in height, thirty inches in width, or two feet in thickness.

b. Newsracks shall only be placed near a curb or adjacent to the wall of a building. Newsracks placed near the curb shall be placed no less than eighteen inches nor more than twenty-four inches from the edge of the curb. Newsracks placed adjacent to the wall of a building shall be placed parallel to such wall and not more than six inches from the wall. No newsrack shall be placed or maintained on the sidewalk or parkway opposite a newstand or another newsrack.

c. No newsrack shall be chained, bolted or otherwise attached to any property not owned by the owner of the newsrack or to any permanently fixed object.

d. Newsracks may be chained or otherwise attached to one another; however, no more than three newsracks may be joined together in this manner, and a space of no less than eighteen inches shall separate each group of three newsracks so attached.

e. No newsrack or group of attached newsracks allowed under paragraph d. hereof shall weigh, in the aggregate, in excess of one hundred twenty-five pounds when empty.

f. Notwithstanding the provisions of subsection b. of section 26-201, no newsrack shall be placed, installed, used or maintained:

(1) Within five feet of any marked crosswalk;

(2) Within fifteen feet of the curb return of any unmarked crosswalk;

(3) Within five feet of any fire hydrant, fire call box, police call box or other emergency facility;

(4) Within five feet of any driveway;

(5) Within five feet ahead of, and twenty-five feet to the rear of any sign marking a designated bus stop;

(6) Within six feet of any bus bench;

(7) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six feet;

(8) Within three feet of any area improved with lawn, flowers, shrubs or trees or within three feet of any display window of any building abutting the sidewalk or parkway or in such manner as to impede or interfere with the reasonable use of such window for display purposes; or

(9) Within fifty feet of any other newsrack containing the same publication.

g. No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of the newspaper or news periodical sold therein.

h. Each newsrack shall be maintained in a clean, neat and attractive condition and in good repair at all times. (Ord. No. 4108, § 1 (part).)

Sec. 26-205. Newsrack identification required.

Within thirty days after this subsection becomes effective, every person or other entity which places or maintains a newsrack on the streets of the City of Glendale shall have his or its name, address and telephone number affixed thereto in a place where such information may be easily seen. Prior to the issuance of a permit under section 26-202 hereof, the applicant shall present evidence of compliance with this section. (Ord. No. 4108, § 1 (part).)

Sec. 26-206. Newsrack violations.

a. Any newsrack installed, used or maintained in violation of the provisions of this subsection may be summarily removed and stored in any convenient place by any public body or officer. Such body or officer shall take reasonable steps to notify the owner thereof. Upon failure of the owner to claim such newsrack and pay the expenses of removal and storage within thirty days after such removal, such newsrack shall be deemed to be unclaimed property in possession of the police division and may be disposed of pursuant to the provisions of sections 19-35 through 19-45 of this Code.

b. In the case of violations of this chapter relative to restrictions upon attachments of newsracks to prop-

erty other than that owned by the owner of the newsrack, to fixed objects or each other, and upon location of newsracks, any public body or officer may, as an alternative to removal under subsection a. hereof, remove such attachment and move such rack or racks in order to restore them to a legal condition.

c. The director of public works shall cause inspection to be made of the corrected condition or of a newsrack reinstalled after removal under this section. The owner of said newsrack shall be charged a ten dollar inspection fee for each newsrack so inspected, which charge shall be in addition to all other fees and charges provided for in this Code. (Ord. No. 4108, § 1 (part).)

Sec. 26-207. Hold harmless.

Every person or other entity which places or maintains a newsrack on a public sidewalk or parkway in the City of Glendale shall file a written statement with the director of public works satisfactory to the city attorney whereby he or it agrees to indemnify and hold harmless the city, its officers, councilmen and employees, from any loss or liability or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any person as a result of the installation, use, or maintenance of a newsrack within the City of Glendale. (Ord. No. 4108, § 1 (part).)

APPENDIX E.

Summary Judgment.

Superior Court of the State of California for the County of Los Angeles. Socialist Labor Party, an unincorporated association, Plaintiff, vs. City of Glendale, a municipal corporation, et al., Defendants. No. C 130538.

Filed Apr. 29, 1977.

The motion of plaintiff Socialist Labor Party for summary judgment came on for hearing on April 21, 1977, in Department 81 of the above-named Court, the Honorable Robert I. Weil, Judge presiding. Plaintiff appeared by its attorneys Robin Meadow, Mark A. Spiegel and Fred Okrand, by Robin Meadow; defendant City of Glendale appeared by its attorney, Scott Howard. After reading and considering the declarations and memoranda filed by the parties and hearing oral argument, the Court granted plaintiff's motion for summary judgment. In that connection, the following proceedings were had and the following determinations were made:

1) The Court found, as a matter of law and on the basis of admissible evidence, that Glendale Municipal Code Sections 26-202(c) and 26-204(i) are constitutionally invalid.

2) Plantiff requested that, on the basis of the California Supreme Court's decision in *Kash Enterprises, Inc. vs. City of Los Angeles,* L.A. No. 30688 (April 15, 1977), the Court declare unconstitutional Section 26-206 of the Glendale Municipal Code, such relief having been sought in the complaint herein. However, because Section 26-206 was not a subject of plaintiff's motion, the Court declined to rule on its constitutionality.

3) The complaint herein seeks injunctive relief, and plaintiff has requested that injunctive relief be made part of the judgment herein. Although the Court finds that the Preliminary Injunction herein was properly granted, it also finds that permanent injunctive relief is unnecessary because it believes that defendant will abide by the terms of the declaratory judgment entered herein. Either party, however may petition this Court for injunctive relief should circumstances justify such an application.

Wherefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1) Sections 26-202(c) and 26-204(i) of the Glendale Municipal Code are unconstitutional, void and unenforceable under the First and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 2 and 7 of the Constitution of the State of California.

2) The Preliminary Injunction herein dated August 22, 1975, is hereby dissolved.

THE CLERK IS ORDERED AND DIRECTED TO ENTER THIS JUDGMENT.

DATED: Apr. 29, 1977.

/s/ Robert Weil
Judge of the Superior Court

Approved as to Form:
Robin Meadow
Mark A. Spiegel
Fred Okrand
By /s/ Robin Meadow
Robin Meadow
Frank R. Manzano, City Attorney
By /s/ Scott H. Howard
Scott H. Howard

APPENDIX F.

California Government Code § 6000. Newspaper of general circulation, definition. A "newspaper of general circulation" is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers, and has been established, printed and published at regular intervals in the State, county, or city where publication, notice by publication, or official advertising is to be given or made for at least one year preceding the date of the publication, notice or advertisement. (Stats.1943, c. 134, p. 987, § 6000.)

CALIFORNIA GOVERNMENT CODE § 6008. Newspaper of general circulation, definition.

Notwithstanding any provision of law to the contrary, a newspaper is a "newspaper of general circulation" if it meets the following criteria:

(a) It is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers and has been established and published at regular intervals of not less than weekly in the city, district, or judicial district for which it is seeking adjudication for at least three years preceding the date of adjudication.

(b) It has a substantial distribution to paid subscribers in the city, district, or judicial district in which it is seeking adjudication.

(c) It has maintained a minimum coverage of local or telegraphic news and intelligence of a general character of not less than 25 percent of its total inches during each year of the three-year period.

(d) It has only one principal office of publication and that office is in the city, district, or judicial district for which it is seeking adjudication.

For the purposes of Section 6020, a newspaper meeting the criteria of this section which desires to have its standing as a newspaper of general circulation ascertained and established, may, by its publisher, manager, editor, or attorney, file a verified petition in the superior court of the county in which it is established and published.

As used in this section:

(1) "Established" means in existence under a specified name during the whole of the three-year period, except that a modification of name in accordance with Section 6024, where the modification of name does not substantially change the identity of the newspaper, shall not affect the status of the newspaper for the purposes of this definition.

(2) "Published" means issued from the place where the newspaper is sold to or circulated among the people and its subscribers during the whole of the three-year period.

(Added by Stats.1974, c. 241, p. 448, § 1.)

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1978
No. 78-1053

SOCIALIST LABOR PARTY, an
Unincorporated Association,

Petitioner,

vs.

CITY OF GLENDALE, a
Municipal Corporation,

Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI

FRANK R. MANZANO,
City Attorney

SCOTT H. HOWARD,
Deputy City Attorney

Room 220
613 East Broadway
Glendale, CA 91205
(213) 956-2080

Attorneys for
Respondent

IN THE

SUPREME COURT OF THE UNITED STATES

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Attorneys for
Respondent

TOPICAL INDEX

TABLE OF AUTHORITIES

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1978
No. _____

SOCIALIST LABOR PARTY, an Unincorporated Association,

Petitioner,

vs.

CITY OF GLENDALE, a Municipal Corporation,

Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent, prevailing party in the State Court action entitled Socialist Labor Party v. City of Glendale (ordered not to be published by the Supreme Court of the State of California), answers the Petition for Writ of Certiorari filed by petitioner as follows:

1. GROUNDS FOR DENYING THE PETITION

The respondent contends that the Honorable California Court of Appeal, Second Appellate District, clearly applied recognized constitutional standards, and that the reasoning espoused by the Court of Appeal is consistent with the applicable decisions of the United States Supreme Court.

2. NATURE OF THESE PROCEEDINGS

The Socialist Labor Party instituted an action against the City of Glendale seeking declaratory and injunctive relief to restrain the City of Glendale from enforcing the provisions of Glendale Municipal Code, 1964, §§ 26-202, 26-204 (i) and 26-206 [Clerk's Transcript on Appeal (hereafter "C.T.") 131-132]. On August 22, 1975, petitioner was granted a preliminary injunction as prayed, and thereafter on April 21, 1977, petitioner was granted a summary judgment declaring Glendale Municipal Code, 1964, §§ 26-202 (c) and 26-204(i) unconstitutional as a matter of law [C.T. 347-349, Summary Judgment, Appendix "A", attached hereto].

Respondent timely filed its Notice of Appeal, and on July 12, 1978 the Honorable Court of Appeal for the State of California, Second Appellate District, reversed the granting of the Summary Judgment by the Superior Court. Socialist Labor Party v. City of Glendale, 82 Cal.App.3d 722, 147 Cal.Rptr. 422 (1978).

The petitioner, after a Petition for Rehearing was denied by the Court of Appeal, filed a Petition for Hearing before the Supreme Court of the State of California, and on October 4, 1978, the Petition for Hearing was denied, the Reporter of Decisions being directed not to publish in the official reports the opinion of the Court of Appeal. (Please see order denying hearing, Appendix "B" attached hereto.) The instant petition for Writ of Certiorari followed.

3. ISSUES PRESENTED

THE DECISION OF THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, WAS IN ACCORD WITH APPLICABLE CONSTITUTIONAL PRINCIPLES.

It is beyond question that the Honorable Court of Appeal was not only fully cognizant of the First Amendment of the Constitution of the United States, but also recognized that the exercise of free speech is a fundamental right generally accorded preferential treatment and protection thereunder. [Appellate Opinion, pp. 6-7.] While recognizing the great protection afforded by the First Amendment, the Court acknowledged the fact that the exercise of free speech is not absolute, and in an orderly yet just society, the time place and means of expression must sometimes be limited so as to not unduly interfere with the rights of others. (Appellate Opinion p. 6.) This Honorable Court has also acknowledged reasonable regulations of First Amendment protected activity. Kovacs v. Cooper, 336 U.S. 77; Cox v. New Hampshire, 312 U.S. 569; Jacobson v. Massachusetts, 197 U.S. 11; American Communications Asso. v. Douds, 339 U.S. 382, 94 L.Ed. 925 (1950); Police Department v. Mosley, 408 U.S. 92, 33 L.Ed.2d 212 (1972), and cases cited thereunder.

Throughout the history of this case, petitioner has steadfastly maintained that the numerical limitations set forth in Glendale Municipal Code, 1964, § 26-204(i) would effectively deny or severely limit the voice of the "Weekly People" [C.T. 200-208; Petition for Writ of Certiorari, p. 8]. Respondent has conceded that petitioner's news publication "may" have to relocate its newsracks under the Glendale Municipal Code, 1964. Respondent, however, continues to advocate that the relocation of plaintiff's newsracks, a maximum of 200 feet from the location which petitioner desires for maximum circulation, would not be of the magnitude to deny petitioner its rights under the First and Fourteenth Amendments of the United States Constitution. On its face, the numerical limitation imposed by respondent's ordinance cannot be said to be unconstitutional. It is not such a restrictive number so as to effectively eliminate or minimize the voice of the press. California Newspaper Publishers Assn., Inc. v. City of Burbank, 51 Cal. App.3d 50, 123 Cal.Rptr. 880 (1975).

Petitioner's sole purpose appears to be to maximize distribution of its news periodical [C.T. 210, Petition for Writ of Certiorari, pp. 6-7]. As the Honorable Court of Appeal espoused:

> "The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others . . ." (Associated Press v. Labor Board, 301 U.S. 103, 132) . . . A public street is precisely that. It is a place for all of the public not subject to appropriation by any individual or select, self-appointed group claiming great constitutional fundamental privilege superior to the rights of all others. . . . Part of the sidewalks have been taken over by the newsracks of such newspapers and magazines. They imply that no one may say them nay . . ." [at pp. 17-18]

Further, the United States Constitution does not require government to accord the press special privileges not shared by the public generally. Pell v. Procunier, 417 U.S. 817, 41 L.Ed.2d 495, (1974).

The balance struck by the Glendale ordinance has been construed by the Honorable Appellate Court to pass constitutional muster, resulting in little or no intrusion on the right of a newspaper to distribute its product.

It appears that the Honorable Court of Appeal applied the proper constitutional standards enunciated in Kash Enterprises, Inc. v. City of Los Angeles, 19 Cal.3d 294, 138 Cal. Rptr. 53 (1977) and Hague v. Committee for Industrial Organization, 307 U.S. 496, 83 L.Ed. 1423 (1939), in that nothing in the broad language therein was directed or intended to be so expanded so as to permit a news publication to gain a portion of a public sidewalk permanently under the guise of free speech. [Opinion of the Court of Appeal, p. 18.]

Glendale Municipal Code, 1964, §§ 26-202 and 26-204 do not expressly nor impliedly regulate the content of a news periodical, nor do they create a limited forum for the disbursal of news periodicals within the City. Petitioner's argument that Glendale's priority system has the sole effect of opening up the public forum to a select few, while severely limiting access to the public forum to others is not factually supported. As the Honorable Court of Appeal stated, and as this respondent has previously contended, the case should be remanded to trial as suggested to determine if weekly publications have indeed been denied equal access to newsrack locations in the City of Glendale [Court of Appeal Opinion, p. 18].

Petitioner's remaining arguments that the Glendale ordinance abridges petitioner's First Amendment rights, and requires the exercise of petitioner's First Amendment rights in alternative forums are just plainly not borne out by the record in this case as set forth in the Opinion of the Honorable Appellate Court.

Throughout the history of this case, respondent has steadfastly maintained that the numerical limitation on newsracks was justified as an effort to preserve safe and uncongested streets and passageways. [C.T. 292-299.] Even the ordinance in question herein (Glendale Ordinance No. 4210) specifically directs itself to justifying its very terms. [C.T. 306.]

It is paramount to mention at this juncture that the City of Glendale has never had the opportunity to prove at trial the necessity and justification for the numerical limitation of newsracks. It is therefore asserted that the Court of Appeal rightly reversed the lower court in order to provide respondent with the opportunity to justify and substantiate its time, place and manner restrictions as applied to respondent.

As succinctly stated by the Honorable Court of Appeal [at p. 17]:

> " . . . the right of the walking public to use the public sidewalks and public areas is of sufficient importance so as to require fair consideration, recognition and protection in determining the extent

to which 'free speech' shall warrant a particular means of distribution and to what extent a particular method of distribution or expression may be reasonably limited"; drawing on analogous situations in Lloyd Corp. v. Tanner, 407 U.S. 551, Young v. American Mini Theaters, 427 U.S. 50, Nat. Broadcasting Co. v. United States, 319 U.S. 190, Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 376-379.

PETITIONER HAS NOT RAISED A SUBSTANTIAL CONSTITUTIONAL QUESTION.

United States Supreme Court Rule 19, 28 U.S.C., states in pertinent part:

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, . . . indicate the character of reasons which will be considered:

"(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

A review of the lengthy and well reasoned opinion by the Honorable Court of Appeal discussing the current state of constitutional law regarding the newsrack method of distribution indicates the Court's recognition of the compelling interest of the municipality in maintaining clear, safe and uncongested streets and passageways, while permitting newsracks to concurrently occupy and utilize the limited sidewalk space to distribute newspapers.

The balance struck by the Glendale ordinance has been construed by the Honorable Appellate Court to pass constitutional muster, resulting in little or no intrusion on the right of a newspaper to distribute its product. It further appears that the Honorable Court of Appeal applied the proper constitutional

standards enunciated in Kash, supra, and Hague, supra, (reasonableness of time, place and manner restrictions), and that the Court properly weighed legitimate governmental interests of maintaining safe and uncongested streets and passageways with the publisher's rights to disseminate its views utilizing the newsrack method of distribution, and found that the method employed by the City of Glendale does not impinge upon the right of free speech by even the smallest voice. [Appellate Opinion, p. 7.]

The asserted conflict of constitutional authority in reality is nonexistent herein. The case at bar is not at odds with constitutional authority as enunciated by the United States Supreme Court and should be sustained. The Honorable Appellate Court's recognition of a need to balance or weigh the conflicting interests of the petitioner's First Amendment rights as claimed, and the rights of the community as a whole, taking into account the limited sidewalk space available, and petitioner's desire to maximize circulation, clearly indicates the Honorable Appellate Court's cognizance of

proper constitutional principles, and consistent therewith, the proper decision in this case. (Martin v. Struthers, 319 U.S. 141, 87 L.Ed. 1313 (1943); see also American Communications Assn. v. Douds, supra.

4. CONCLUSION

Respondent respectfully urges that the petitioner's request for a writ of certiorari be denied, and if necessary, that this matter proceed to trial to determine if the Glendale ordinance would in fact favor daily publications to the detriment or exclusion of weekly publications.

A denial of certiorari in this case would of course impart no implication or inference concerning the Court's view of the merits of this particular case, nor result in any precedent. (Hughes Tool Co. v. Trans World Airlines, 409 U.S. 363, 34 L.Ed.2d 577 (1973), reh. den. 410 U.S. 975; Maryland v. Baltimore Radio Show, 338 U.S. 912, 94 L.Ed. 562 (1950).) Further, this case has been ordered not to be published in the official California Reports, and therefore results only

in the law of the case and creates no precedent in the State of California. (California Rules of Court, Rules 976-977.)

For the reasons stated above, it is respectfully submitted that this Petition for Writ of Certiorari be denied.

Respectfully submitted

FRANK R. MANZANO,
City Attorney

SCOTT H. HOWARD,
Deputy City Attorney

APPENDIX A

RM:rique 4/22/77

LOS ANGELES COUNTY CLERK
CENTRAL DISTRICT
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MARK A. SPIEGEL
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F I L E D
APR 29 1977

John J. Corcoran, Acting County Clerk

By Irma Brown, Deputy

FRED C. OKRAND
ACLU FOUNDATION OF
SOUTHERN CALIFORNIA
633 South Shatto Place
Los Angeles, California 90005
Telephone: (213) 478-1720
Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SOCIALIST LABOR PARTY, an unincorporated association, Plaintiff, vs. CITY OF GLENDALE, a municipal corporation, et al., Defendants.	NO. C 130538 SUMMARY JUDGMENT

The motion of plaintiff Socialist Labor Party for summary judgment came on for hearing on April 21, 1977, in Department 81 of the above-named Court, the Honorable

Robert I. Weil, Judge presiding. Plaintiff appeared by its attorneys Robin Meadow, Mark A. Spiegel and Fred Okrand, by Robin Meadow; defendant City of Glendale appeared by its attorney, Scott Howard. After reading and considering the declarations and memoranda filed by the parties and hearing oral argument, the Court granted plaintiff's motion for summary judgment. In that connection, the following proceedings were had and the following determinations were made:

1) The Court found, as a matter of law and on the basis of admissible evidence, that Glendale Municipal Code Sections 26-202(c) and 26-204(i) are constitutionally invalid.

2) Plaintiff requested that, on the basis of the California Supreme Court's decision in Kash Enterprises, Inc. vs. City of Los Angeles, L.A. No. 30688 (April 15, 1977), the Court declare unconstitutional Section 26-206 of the Glendale Municipal Code, such relief having been sought in the complaint herein. However, because Section 26-206 was not a subject of plaintiff's motion,

the Court declined to rule on its constitutionality.

3) The complaint herein seeks injunctive relief, and plaintiff has requested that injunctive relief be made part of the judgment herein. Although the Court finds that the Preliminary Injunction herein was properly granted, it also finds that permanent injunctive relief is unnecessary because it believes that defendant will abide by the terms of the declaratory judgment entered herein. Either party, however may petition this Court for injunctive relief should circumstances justify such an application.

Wherefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1) Sections 26-202(c) and 26-204(i) of the Glendale Municipal Code are unconstitutional, void and unenforceable under the First and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 2 and 7 of the Constitution of the State of California.

2) The Preliminary Injunction herein

dated August 22, 1975, is hereby dissolved.

THE CLERK IS ORDERED AND DIRECTED TO ENTER THIS JUDGMENT.

DATED: APR 29 1977

/s/ Robert I. Weil
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

ROBIN MEADOW
MARK A. SPIEGEL
FRED OKRAND

By /s/ Robin Meadow
Robin Meadow

FRANK R. MANZANO, CITY ATTORNEY

By /s/ Scott H. Howard
Scott H. Howard

APPENDIX B

ORDER DUE
October 6, 1978

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

2d District, Division 2, Civil No. 52122

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SOCIALIST LABOR PARTY,

v.

CITY OF GLENDALE

SUPREME COURT
F I L E D

OCT -4 1978
G.E. BISHEL,
Clerk

Deputy

Respondent's petition for hearing DENIED.

Bird, C.J., and Mosk, J., are of the opinion that the petition should be granted.

The Reporter of Decisions is directed not to publish in the Official Reports the opinion in the abov_e entitled cause filed July 12, 1978 and appears in 82 Cal.App.3d 722. (Cal. Const., Art., VI; section 14; Rule 976, Cal. Rules of Court.)

Bird, C.J., and Clark, J., are of the view that the opinion should remain published.

Bird

Chief Justice